IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1958 OF 2004

The Secretary of Kuber CHS Ltd. ... Petitioner

Vs.

Brihanmumbai Mahanagar Palika
and anr. ... Respondents

Mr.A.Y. Bookwala, Sr. Counsel with Mr. S.A. Balwal i/by Vyas & Balwant for Petitioner.

Mr. D.H. Mehta with Mrs. A.K. Savla for Respondent Nos. 1 and 2.

Mr.A.Y. Sakhare, Sr. Advocate i/by S.S. Aradhye for R. No. 3.

CORAM: F.I. REBELLO &
MRS.V.K.TAHILRAMANI,JJ.
DATE : 12th June, 2006

P.C.:

1. The Petitioners have a lease in their favour with MHADA, dated 13.8.1989. By that indenture of lease the Petitioners herein were allotted the land on which the building has been put up. There are altogether 30 flats and according to Petitioners, the same are not occupied. As the municipal dues were in arrears for a long time, the land along with building was put up for auction on three occasions. The reserved price at that time was shown as Rs.2,60,00,000/-. The case of the Corporation is that as they could not get any offer in terms of the reserved price, they thereafter applied for bids without showing the reserve price. The respondent No. 3 along with some others, were bidders. The Bid of respondent No. 3 in the sum of Rs.13,81,000/- was accepted. This amount has been paid by the Respondent No. 3 in favour of Respondent No. 1.

2. On behalf of the Petitioners, their learned counsel challenges the auction at which the Respondent No. 3 was the highest bidder, on two grounds. It is firstly contended that no notice was served on the Petitioners. The only time they had notice was of the auction where the bid was accepted, as the notice was pasted on the property. The office bearers of the society had approached the officer conducting the auction and they had informed that they were willing to deposit by cheque the entire amount. That was not accepted. To clarify the matter it may be pointed out that in the affidavit filed on behalf of Respondent No. 1, it is admitted that the office bearer did come and they offered to make the payment and they were given time and the auction was kept pending. But thereafter nobody turned up. Respondent also pointed out that the Petitioners were earlier known as the "Borivali Cooperative Society". Thereafter the said society became the present petitioners to whom the lease has now been granted. No notice was given to the present petitioners of the demand of municipal dues. Apart form that, it is pointed out that in the lease deed entered into with MHADA, it was clearly set out in Clause (i), that as on the date of lease deed, the municipal taxes and dues are nil.

3. The second submission as advanced on behalf of the Petitioners is that under the rules for sale,

framed by Respondent No. 1 no property can be sold without a reserve price. In the instant case, the auction was held without notifying a reserve price. The mere fact that earlier reserve price was notified in the earlier advertisement, does not entitle the respondent No. 1 to do away with the fixing of the reserve price in the absence of any powers under the rules. There is no such power.

4. On behalf of Respondent No. 1 their learned counsel submits that the respondent had no choice but to sell the property considering that the Petitioners were due and owing to Respondent No. 1 large amounts of money. Earlier reserve price had been notified. There were no bidders and it is in these circumstances that the last notice was put up without the reserve price.

5. On behalf of the respondent No. 3, the successful bidder, it is pointed out that this court should not in the exercise of its extra ordinary jurisdiction interfere with the matter as the Petitioner’s have remedy by way of suit. It is also submitted that Respondent No. 3 has complied with the requirements of law including the payment of money and as such the auction cannot be faulted with, and in these circumstances, the Petition ought to be dismissed.

6. Having heard the learned counsel, we are clearly

of the opinion that if the sale in favour of Respondent No. 3 is confirmed, it will be totally unconscionable. According to Respondent No. 1 themselves, the reserve price was in the sum of Rs.2,60,00,000/-and the property has been sold for a farthing i.e. Rs.13,89,000/-. Such a bid could only have been accepted with the connivance of the officials of Respondent No.1. Even if reserve price was not notified, the records would show the value of the property. A reserve price being fixed after valuation, we fail to understand as to how such a bid as offered by Respondent No. 3 could have been accepted. Apart from that the Petitioners are also right in the other objections raised by them. Once a procedure is laid down for auction of the property, it is not open to respondent or its officials to give a go bye to the procedure and rules in the absence of power. The very purpose in fixing a reserve price is to get valuation of the property so that the property is sold for a fair price. In the instant case, the area where the building stands is admeasuring about 975 sq. mtrs. It is a newly constructed building in which there are 30 flats admeasuring 1000 sq. ft. in which there are no occupants. The procedure, of providing for a reserve price is to verify whether the bid should be accepted or not and that the property which is being sold fetches a fair price. That procedure has not been followed. In our opinion on this count alone the auction is liable to be set

aside.

7. Apart from that it is the Petitioners who have right in the land and the building constructed thereon. It may be possible to contend that in so far as records of Respondent No. 1 are concerned, it is the Borivali Cooperative Housing Society whose name stands in their records. That by itself cannot defeat the rights of the Petitioners herein. The lease now entered into with the petitioners herein. They had to have a fair opportunity of meeting the liability. In the instant case, that opportunity was not given to them. On this count also the action of Respondent No. 1, in accepting the bid offered by Respondent No. 3 is without authority of law and consequently liable to be set aside.

8. At the same time, the interest of Respondent No. 1 and 3 will have to be protected.

9. We are therefore, disposing of this petition by issuing the following directions :

(1) The sale in favour of Respondent No. 3 is set aside.

(2) The Petitioners to deposit with Respondent No. 1 within seven days from today the entire demand along with interest, if any.

(3) If the Respondent No. 1 has not made a demand on the Petitioner's, in respect of the cost of advertisement and or has not been included it the bill served on the Petitioner, liberty to the Respondents to do so. In the event the demand is made by Respondent No. 1 on the Petitioners, the Petitioners to pay the said amount within two weeks from the demand being made, failing which the attachment on the property will continue. Any dispute regarding their demand can be raised after paying the amount demanded.

(4) The Respondent No. 3 has deposited the sum of Rs.13,81,000/- in the year 2004. The Respondent No. 1, to refund the said amount along with interest, at 9% p.a. This interest amount to be paid by Respondent No. 1 to Respondent No. 3, will be reimbursed by the Petitioners in favour of the Corporation within two weeks of the Corporation making the demand on the Petitioners.

(5) Though the auction is set aside, still the attachment will continue till such time as the two payments of cost of publication and interest are paid by the Petitioner in favour of Respondent No. 1. On such payment the attachment stands lifted.

. Rule made absolute accordingly. No order as to cots.

(F.I.REBELLO, J.)

(MRS.V.K.TAHILRAMANI,J.)